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# SPANISH COURTS

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Fortunately for one desiring to learn something of the Spanish judiciary, there are two or three great outstanding laws that cover the subject most minutely. Even the dress of the judge and officers of the court and the manner of addressing the court are made matters of law. The Organic Law, as it is called, is that of June 23, 1870. It is a veritable code, containing 932 articles. Of course many important modifications have taken place since that time, but the law of 1870 still remains the basic law.

## JUDICIAL CLASSIFICATIONS

We may for convenience take the measure of the judicial organization in two directions. We may examine its geographical arrangement over the face of the national territory; and we may take its measure vertically, that is to say, hierarchically.

After seven centuries of war, the Moors were driven from Spain and the numerous Christian kingdoms became united under Ferdinand and Isabella. With administrative modernization the delimitations of the older monarchies survived in the provinces. Old and New Castille, Catalonia, Aragón, León, Navarre, Seville, Granada, Valencia, Murcia, Jaén, Galicia, the Basque Provinces, Asturias, Córdoba,—these names take us back to medieval history. In 1833 the older provinces were for better administration divided into forty-nine new provinces, each taking its name from its leading city. For judicial purposes, the provinces were subdivided into *partidos* (a Spanish term which I shall be forced to retain). About five hundred there were in all, and these again were divided into municipalities.<sup>1</sup>

When we come to construct the judicial hierarchy composing the so-called "ordinary" jurisdiction upon these political divisions, we find within each municipality at least one justice of the peace<sup>2</sup> and one municipal court.<sup>3</sup> Within the *partido* there is a tribunal of first instance having a civil<sup>4</sup> and a criminal side.<sup>5</sup> This last grade of court is of course recognizable as the court of similar name in France<sup>6</sup>

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<sup>1</sup> *Terminos municipales.*

<sup>2</sup> *Juzgado municipal.*

<sup>3</sup> *Tribunal municipal.*

<sup>4</sup> *Jueces de primera instancia.*

<sup>5</sup> *Juzgado de instrucción.*

<sup>6</sup> *Tribunal de première instance.*

and as our own county courts. They are the busy courts of first resort, where all civil and commercial cases of any consequence are first heard. Above them come the courts of appeal.<sup>7</sup> There are in all fifteen of these courts and the jurisdiction of each covers what is termed a district,<sup>8</sup> composed of one or more of the provinces. Above the courts of appeal is the Supreme Court.<sup>9</sup>

The "ordinary" jurisdiction, whose arrangement of courts has just been outlined, is that which applies the common law, that is, the law applicable alike to all classes of persons throughout the realm. Such law is found in the civil and criminal codes. But there are also special bodies of law governing particular classes of persons, as for example administrative law, commercial law, industrial law, to which I might add ecclesiastical and military law. The application of such special bodies of law constitutes the so-called "exceptional" jurisdiction, and there were periods of Spanish history when each possessed its court or courts. To-day, much as our common-law courts are given equity jurisdiction, the ordinary jurisdiction has been impressed with the care of administrative and commercial cases. Industrial law and courts are of very recent growth. The military and ecclesiastical jurisdictions lie outside the purposes of this article.

Let us now examine the ordinary and exceptional jurisdictions, bearing in mind the geographical and hierarchical divisions already noted.

#### COURTS OF THE ORDINARY JURISDICTION

##### *a. Justice of the Peace*

A justice of the peace sits in each municipality.<sup>10</sup> His jurisdiction is very limited. To him falls what is called the "conciliatory jurisdiction."<sup>11</sup> With few exceptions, the commencement of all actions has to be preceded by an effort at conciliation. The parties appear before the justice of the peace, who endeavors to effect a compromise.<sup>12</sup> The judges who hear a case which has not first been through the conciliatory jurisdiction of the justice of the peace are subject to penalty; the regularity of the action, however, remains unaffected.

Some voluntary or *ex parte* jurisdiction falls to the justice of the peace when there is no court of first instance in the locality and the matter necessitates local action. Finally, one of his functions is

<sup>7</sup> *Audiencias*.

<sup>8</sup> *Distrito*.

<sup>9</sup> *Tribunal Supremo*.

<sup>10</sup> Law of Sept. 15, 1870, Art. 12; Royal Order, Sept. 30, 1870, Art. V; Law of Aug. 5, 1907, Arts. 1, 16.

<sup>11</sup> *Conciliación*.

<sup>12</sup> *Ley de Enjuiciamiento Civil* (Code of Civil Procedure), Arts. 460 *et seq.*

the execution of certain preliminary acts relating to the conservation of the property of deceased persons.<sup>13</sup>

### *b. Municipal Courts*

In none of these cases are the functions of the justice of the peace truly judicial. He has practically no contentious or contested jurisdiction. The lowest truly judicial functions of the nation are exercised by the municipal courts. These are composed of three judges, and there are one or more courts to each municipality. The municipal court hears both civil and criminal cases, and in addition we are to remember that the civil or ordinary courts in Spain exercise commercial jurisdiction.

On its civil side its procedure is oral. All cases involving sums not exceeding 500 pesetas<sup>14</sup> come before it in first resort. This is enlarged to 1,500 pesetas in special enumerated cases involving (1) innkeepers and guests; (2) carriers and passengers; (3) emigration agents and emigrants; (4) captain and crew; and (5) transactions at recognized fairs.<sup>15</sup>

On its criminal side this court hears in first resort all infractions known as *faltas*, or finable offenses such as, roughly speaking, constitute our misdemeanors.<sup>16</sup>

The decisions of both the justices of the peace and the municipal courts are appealable to the courts of first instance.

### *c. Courts of First Instance*

The Spanish Province, as I have already described, is divided into what are known as *partidos*, and most of these have at least one court of first instance.<sup>17</sup> The Organic Law of 1870 provided in each *partido* what was called a *tribunal de partido*, composed of three judges, which were to have both civil and criminal jurisdiction throughout the *partido*; each *partido* was to be divided into two circumscriptions<sup>18</sup> having an examining or committing magistrate.<sup>19</sup> This provision was never carried out for financial reasons. The Royal Order of Sept. 30, 1870, authorized the continuance of the older courts of first instance. In place of district examining judges, judges of the courts of first instance are now designated for this duty.

<sup>13</sup> *Primeras providencias á prevención.*

<sup>14</sup> In normal times before the present war the peseta was worth about 17 cents.

<sup>15</sup> Law, Aug. 5, 1907, Art. 18.

<sup>16</sup> *Ley de Enjuiciamiento Criminal* (Code of Criminal Procedure), Art. 14.

<sup>17</sup> *Tribunal de primera instancia.*

<sup>18</sup> *Circunscripciones.*

<sup>19</sup> *Juez de instrucción.*

The civil affairs of the courts of first instance are either contentious or non-contentious.<sup>20</sup> The non-contentious jurisdiction consists of uncontested or *ex parte* acts, and includes categories both civil and criminal. The contentious jurisdiction comprises contested causes and includes all civil and commercial actions which, involving above 500 pesetas or exceptionally above 1,500 pesetas, can not be brought before the municipal courts. The procedure is entirely written and differs according as the contested sum is less than 3,000 pesetas, when it is known as that of the "lesser value," or more than that sum, when it is termed that of the "greater value."<sup>21</sup> In second resort it hears appeals from the decisions of the justices of the peace and municipal courts.

Spanish criminal jurisdiction is determined by the gravity of the punishment fitted to the crime charged. The existence of three grades of original criminal jurisdiction marks a contrast from our own system. Small finable offenses—*faltas*—are settled by the municipal courts. Above this grade of offense jurisdiction again divides, part going for first hearing to the courts of first instance and part to the courts of appeal. There are three grades of punishments: those denominated (a) "light," (b) "correctional," and (c) "afflictive."<sup>22</sup> "Light" punishments are applied to *faltas*; "correctional" and "afflictive" to *delitos*. Such of those crimes denominated *delitos* as are punishable by "correctional" penalties are first heard in the courts of first instance; such as are punishable by "afflictive" penalties go directly to the next higher grade of justice, the courts of appeal.

From the municipal courts appeals may be taken in cases involving *faltas*.<sup>23</sup> The duty of making the preliminary investigation into the evidence of guilt is delegated to the judges of first instance, who thus become the committing magistrates.<sup>24</sup> In this respect they perform the functions of our magistrates and grand juries. They have also to decide questions of criminal jurisdiction, and the law provides appeals from their decisions on all those matters.<sup>25</sup>

#### d. Court Officers

Before going into the structure of the courts of appeal and their functions, let me give a brief description of the officialdom met with around the courts. The task is the easier in that they are in a general way duplicated throughout all the grades of the ordinary jurisdiction.

<sup>20</sup> *Contencioso or voluntaria*.

<sup>21</sup> *Menor cuantía, mayor cuantía*. See *Ley de Enjuiciamiento Civil*, Arts. 483, 484.

<sup>22</sup> (a) *penas leves*; (b) *correccionales*; (c) *aflictivas*; Penal Code, Art. 26.

<sup>23</sup> Law of Aug. 29, 1893, Art. 11.

<sup>24</sup> *Jueces de instrucción*. *Ley de Enjuiciamiento Criminal*, Art. 14, (2); *Ley*, Aug. 29, 1893, Art. 11.

<sup>25</sup> *Ley orgánica*, Art. 276.

In the first place, in Spain the judicial career is a specially prepared career. The law student who says that he is going to become a judge is not presumptuous, as one might think, for in Spain one studies especially for that career, inscribes as a candidate and competes in special examinations for the bench. Once admitted he holds his position for life (save in the case of the lowest grades) and occupies a very well-defined station in the judicial hierarchy, up which he may climb with time and ability and compliance with the minute regulations found in the Organic Law of 1870 and its supplements.

Every court and every division of a court has a secretary.<sup>26</sup> His qualifications for office are roughly the same as those of a judge, so that he is and deserves to be a highly respected official. He is guardian of the records of the cases; he takes the evidence down in writing, a special period for the taking of testimony being accorded the parties before the case comes to trial, so that the judges, at least in civil cases, deal only with a written record and the arguments of counsel. He countersigns all judgments and orders of the court; fixes the dates for acts of procedure; gives certified copies when authorized to do so.

A librarian<sup>27</sup> is made custodian of the records, wherever the volume of litigation warrants it. He also has charge of the law library attached to the court, if there is one.

A process server<sup>28</sup> is employed by each court or division of a court to serve all papers outside the court buildings.

The Spanish tipstave<sup>29</sup> keeps order in the court room and about the halls of the court house, marshals the witnesses in criminal cases, and acts as aid to the judges and secretaries. He is by all odds the gentleman whom the observer of Spanish court life needs to humor by ceremonious treatment, cigarettes and other minor benefits. If duly impressed with your importance, you will be accorded every possible courtesy, even privilege. If, on the other hand, he is unduly impressed with his own importance, it will be wiser, for purposes of observation, to move to another jurisdiction.

The Spanish bar recognizes the English differentiation between the barrister and solicitor. It is composed in the first place of those who plead, the advocates.<sup>30</sup> Each court of appeal has its Order of Advocates,<sup>31</sup> with minute regulations as to admission and conduct. Admission hangs chiefly upon a legal degree and an oath taken before a court of appeal or a court of first instance. Of course all the law

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<sup>26</sup> *Secretario*.

<sup>27</sup> *Arquivero*.

<sup>28</sup> *Oficial de sala*; he corresponds to the French *huissier*.

<sup>29</sup> *Alguacil*.

<sup>30</sup> *Abogados*; generically called *letrados*.

<sup>31</sup> *Colegio de abogados*.

schools are state institutions, so that there is no place for a separate bar examination. A chief purpose of the Order of Advocates is to distribute practice as equitably as possible among its active members, an advantageous but delicate duty.

The Spanish solicitor<sup>32</sup> never pleads, but engineers the prosecution of a legal action from its inception until its conclusion. The solicitors are also organized into an order<sup>33</sup> with rules of admission and discipline sanctioned by the state. If the aspirant to the career of solicitor has a legal degree, he need pass no examination for admission to the order; if he has no such degree, he is required to pass a special examination which deals chiefly with the art or science of procedure. Of course the exercise of the profession of advocate is not compatible with that of solicitor. One must elect to be one or the other. Like our notaries, he is obliged to give security to the government for the correct and honest performance of his functions.

Every court has one or several special attorneys attached to it representing exclusively the interests of the government. Not only in criminal trials, when he acts as prosecutor, but even in civil actions, the interests of society as a whole are jealously guarded through the intervention of a special attorney. He is called the *fiscal*. The whole body of these special attorneys<sup>34</sup> is carefully organized, from the *fiscal* of the Supreme Court, who corresponds roughly to our attorney general, to the modest *fiscal* attached to the justice of the peace. Immediately under the *fiscal* of the Supreme Court is an assistant<sup>35</sup> and eight state's attorneys,<sup>36</sup> and each of the courts of appeal possesses a similar organization, the number of attorneys varying according to the importance of the jurisdiction.

#### *e. Court of Appeal*

With this digression, let us return to the court of appeal and look at its structure in detail.

It is composed of three divisions. Two of these are judicial, one civil, the other criminal;<sup>37</sup> the third is a governing or executive division.<sup>38</sup> To expedite business, the two judicial divisions may be subdivided into chambers (as is the case in Madrid and Barcelona). Each has a president justice<sup>39</sup> and at least four other justices, while

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<sup>32</sup> *Procurador*.

<sup>33</sup> *Colegio de procuradores*.

<sup>34</sup> Called the *ministerio público* or *fiscalía*.

<sup>35</sup> *Teniente-fiscal*.

<sup>36</sup> *Abogados fiscales*.

<sup>37</sup> *Sala de lo civil; sala de lo criminal*.

<sup>38</sup> *Sala de gobierno*.

<sup>39</sup> The courts of appeal and the Supreme Court are composed of justices, *magistrados*; courts of lower grade are composed of judges, *jueces*.

a president justice presides over the court as a whole. The president justices and the *fiscal* form the third or executive division. This last distributes the business of the court, exercises disciplinary powers, and even takes part in the appointment of judges to the lower courts.<sup>40</sup>

The civil division of the court of appeal hears appeals from the courts of first instance. The criminal jurisdiction of the provincial courts of appeal<sup>41</sup> is original and appellate.<sup>42</sup> It takes original cognizance of all crimes known as *delitos* to which attach "afflictive" punishments. The Penal Code mentions sixteen of such punishments ranging downwards from the death penalty.<sup>43</sup> These sixteen punishments are again classified into nine gravest, requiring a jury<sup>44</sup> to try the facts, and seven lighter, which are applied without the "judges of the facts,"<sup>45</sup> as the jury is often termed.

The use of the jury in Spain is very limited. It is not surprising not to find it functioning in civil cases; but it is, in fact, employed only in the gravest crimes.<sup>46</sup> The magical Anglo-Saxon number 12 has been imported into Spain, but the verdict is declared by a majority.<sup>47</sup> As a court of second resort the *Audiencia* hears appeals from the courts of first instance.<sup>48</sup>

<sup>40</sup> *Ley Orgánica*, Tit. I, ch. IV; Tit. XIII, ch. I.

<sup>41</sup> The criminal division of the court of appeal is to-day known as the Provincial Court of Appeal (*Audiencia provincial*). The Organic Law of 1870 provided for fifteen courts of appeal, each having a criminal division known as the Criminal Division of the Court of Appeal (*Sala de lo Criminal de la Audiencia Territorial*). In 1882 judicial reforms were effected. The fifteen criminal divisions of the courts of appeal were retained and in addition independent criminal courts of appeal (*audiencias de lo criminal*) were provided in the capital of each province and in certain other cities, in all to the number of 95. The requirements of these reforms exceeded the nation's purse, and by a Royal Decree of July 16, 1892, forty-six of these were suppressed, leaving a criminal section to each of the fifteen older courts of appeal, and thirty-four of the newer criminal courts of appeal, one in the capital of each province. It was again found necessary to retrench, and by a Royal Decree of Aug. 29, 1893, the thirty-fourth special criminal courts of appeal were abolished and their jurisdiction turned back to the old criminal division of the court of appeal, which assumed the name of Provincial Court of Appeal (*Audiencia provincial*). Thus, by a sort of evolution in a circle, this grade of Spanish criminal jurisdiction has practically returned to the state to which it was brought by the reforms of the Organic Law of 1870.

<sup>42</sup> *Ley Orgánica*, Art. 276; *Ley Adicional*, Oct. 14, 1882, Art. 4; *Decreto*, Aug. 29, 1893, Art. 2.

<sup>43</sup> Art. 26.

<sup>44</sup> *Jurado*.

<sup>45</sup> *Jueces del hecho* as contrasted with the *jueces del derecho*

<sup>46</sup> Specifically mentioned in the Jury Law, Apr. 20, 1888, Arts. 4 and 5.

<sup>47</sup> *Id.* Art. 35.

<sup>48</sup> *Ley Orgánica*, Art. 276.



*f. Supreme Court*

The Supreme Court was created in 1812 by the *Cortes* of Cádiz, and it has passed through important modifications since that date. It consists of a president justice, and four divisions, one for civil appeals having nine justices and a president, one for criminal appeals having a president and eight justices, one for administrative cases in first and last resort, and finally the so-called executive division like the division of similar name in the courts of appeal, composed of the four president justices and the *fiscal* or attorney general.<sup>49</sup> The Supreme Court of Spain pronounces final judgments. It is therefore in a true sense the court of last resort. Appeals are not always remanded for a rehearing before the courts of appeal, as is the procedure of the French Court of Cassation. The third chamber<sup>50</sup> deals exclusively with administrative cases, that is, cases involving relations between the state and private citizens.

## EXCEPTIONAL JURISDICTIONS

The exceptional jurisdictions are, in addition to the military and ecclesiastical, with which I shall not deal, the commercial, the administrative and the industrial.

*a. Commercial*

Spain, like most other European countries save England, has a Commercial Code<sup>51</sup> and a special commercial procedure.<sup>52</sup> But there are no special commercial courts to-day as in France. That does not mean that Spain's commercial law has not had an independent and important development. In the seventh century the first uniform and germanic code, which was given to Spain by the Visigoths,<sup>53</sup> declared that

"If merchants from foreign ports have any lawsuit amongst themselves, no judge of our land shall judge it, but they shall answer according to their own laws and before their own judges."<sup>54</sup>

In the thirteenth century maritime customs of the port of Barcelona were reduced to writing and became one of the earliest and most influential of the maritime codes.<sup>55</sup> By the eighteenth century the

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<sup>49</sup> *Ley Orgánica*, Art. 63; Royal Decree, Jan. 20, 1875; Royal Decree, Aug. 29, 1893; *Ley*, April 5, 1904.

<sup>50</sup> *Sala de lo contencioso-administrativo*.

<sup>51</sup> Two, 1829 and 1885.

<sup>52</sup> Book III, part II, *Ley de Enjuiciamiento Civil*.

<sup>53</sup> *Fuero Juzgo*.

<sup>54</sup> *Id.* Tit. III, Law II.

<sup>55</sup> *Libro del Consulado del Mar*.

Ordinances of Bilbao<sup>56</sup> became the accepted commercial law of the kingdom. They spread to the New World and became the basis of the modern commercial codes of Latin America; in 1829 they were used as the basis of the first Spanish Commercial Code. In 1885 the present Commercial Code was adopted.

Spain had a medieval consular jurisdiction similar to that of France, and it lasted until the Commercial Code of 1829 organized the commercial courts. Due to abuses they were abolished in 1868, and this form of exceptional jurisdiction passed to the civil or ordinary courts, where it remains to-day. The conferring of this exceptional jurisdiction upon the ordinary judges may be likened to the conferring of equity powers upon common-law judges. The same court applies two systems of law and two procedures.

### *b. Administrative*

Administrative jurisdiction has not had a uniform history in Spain. When the Supreme Court received a new organization by the Organic Law of 1870, its fourth division<sup>57</sup> was devoted to the trial of administrative actions. It was the sole administrative court of the nation. A Royal Decree of January 20, 1875, again brought into being the Council of State.<sup>58</sup> This, like the French Council of State, took over all administrative cases and the fourth division of the Supreme Court disappeared. This condition lasted until a law of September 13, 1888, abolished the judicial functions of the Council of State and created special, independent administrative courts.<sup>59</sup> But they in turn passed away under a law of April 5, 1904, when a special division of the Supreme Court<sup>60</sup> reassumed jurisdiction.

### *c. Industrial*

With the adoption of workmen's compensation acts in Spain a new jurisdiction was created, that of the industrial courts.<sup>61</sup>

In the chief city of each *partido*, whenever industrial activity warrants it, the government establishes an industrial court upon petition of the employers and employees.<sup>62</sup> A court is composed (a) of a president judge drawn from the court of first instance; (b) three members, unlearned in the law, and an alternate, being employees chosen from a list made up by the employers; and (c) three members,

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<sup>56</sup> *Ordenanzas de Bilbao*.

<sup>57</sup> *Sala de recursos contra la administración*.

<sup>58</sup> *Consejo de Estado*.

<sup>59</sup> *Tribunales contenciosos*.

<sup>60</sup> *Sala de lo contencioso-administrativo*.

<sup>61</sup> *Tribunales industriales*. Law, May 19, 1908; Royal Decree, Oct. 20, 1908.

<sup>62</sup> Law, May 19, 1908, Art. 1.

also unlearned in the law, and an alternate, being employers chosen from a list made up by the employees.<sup>63</sup> Pleadings may be conducted without either advocate or solicitor.<sup>64</sup> Jurisdiction has been granted over all questions arising out of accidents to workmen under the workmen's compensation laws, and, in addition, to all questions between employer and employee<sup>65</sup> arising upon the contract of hire of services. Rehearings are first had before an enlarged court composed of seven members named by each side.<sup>66</sup> Appeals are then taken to the courts of appeal, which have power to quash the decision and remand the case.<sup>67</sup>

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<sup>63</sup> *Id.* Art. 3.

<sup>64</sup> *Id.* Art. 4.

<sup>65</sup> *Id.* Art. 6.

<sup>66</sup> *Id.* Art. 28.

<sup>67</sup> *Id.* Art. 30.